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No. 229

IN THE

Supreme Court of the United States

LOUIS JOE LEFORCE, *Petitioner*

VS.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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LOUIS JOE LEFORCE, *Petitioner*

VS.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable, the Supreme Court of the United States:

Now comes Louis Joe Le Force, hereinafter called petitioner, and applying for writ of certiorari to the United States Court of Appeals for the Fifth Circuit, respectfully shows:

STATEMENT OF THE CASE

An information containing one count, charging Petitioner with an alleged violation of Section 3, Title 18, U.S. C., was filed in the lower Court on May 9th, 1951. (Tr.

4, 5). The information charged Petitioner with being an accessory after the fact, in that, Petitioner, well knowing that on or about the 16th day of March 1951, in Dallas County, Texas, the principal, George Everett Thomas, Jr., did unlawfuly and knowingly, in violation of the Marihuana Tax Act of 1937 (Sec. 2593 (a) of Title 26, (U.S.C.), acquire and obtain through some form or manner of transfer to the Grand Jurors unknown, approximately 83 grains of Marihuana, without the said George Everett Thomas, Jr., having paid the transfer tax thereon at the time of such acquisition of said Marihuana, did on or about the said date of March 16th, 1951, in Dallas County, Texas, wilfully, knowingly and unlawfully assist the said principal, George Everett Thomas, Jr., in order to hinder and prevent his, the said principal's, apprehension and trial and punishment.

The case of the principal, George Everett Thomas, Jr., who was charged by indictment with the alleged unlawful acquisition of the marihuana, was, on motion of the Government's counsel, consolidated with Petitioner's case for the purpose of trying Petitioner. The indictment against the principal was returned and filed in the lower Court on the 4th day of May, A.D., 1951. (Tr. 1, 2). The principal, Thomas, entered a plea of guilty to the charge against him, but this Petitioner entered a plea of not guilty. (Tr. 6), and the case was tried before the Court without the intervention of a jury. At the conclusion of the trial, which was begun on May 9th, 1951, and con-

cluded on May 10th, 1951, the lower Court adjudged Petitioner guilty. (Tr. 103), and thereupon sentenced Petitioner to a term of two years to serve. (Tr. 103, 104).

Petitioner seasonably filed his notice of appeal to the United States Court of Appeals for the Fifth Circuit from the judgment of conviction. (Tr. 104, 105). Petitioner was enlarged upon bail in the sum of $3500.00 pending this appeal.

The aforesaid United States Court of Appeals, by a Per Curiam Opinion, did, on June 2nd, 1952, affirm the judgment of the lower court. (Tr. 111)

That thereafter, Petitioner seasonably filed his petition for a rehearing in the said United States Court of Appeals (Tr. 113), which was overruled by that Court on July 2nd, 1952, (Tr. 121).

STATEMENT AS TO JURISDICTION

Jurisdiction is invoked under Section 1254, Title 28, U.S.C.A. The opinion of the United States Court of Appeals for the Fifth Circuit was filed on June 2nd, 1952. Petition for rehearing was denied on July 2nd, 1952.

QUESTIONS PRESENTED

1. Before one may be convicted for being an accessory after the fact under Section 3, Title 18, U.S.C.A., it must be proven beyond a reasonable doubt that:

(a) An offense against the United States had been committed.

(b) The accused had knowledge of the commission of such offense.

(c) The accused, having such knowledge, did some affirmative overt act to receive, relieve, comfort or assist the principal (offender) in order to hinder or prevent the said principal's aprehension, trial or punishment in a Court of the United States, and not courts in general.

2. Where a person is charged as being an accessory after the fact under Sec. 3, Title 18, U.S.C.A., Scienter is an absolute requisite to due process of law. *Pettibone vs. U. S.*, 148 U.S., 197; *Fullbright vs. U. S.*, 91 Fed. (2) 210; *Hargett vs. U. S.*, 183 Fed. (2) 859; *Odom vs. U. S.*, 116 Fed. (2) 996; *Palmquist vs. U. S.*, 149 Fed. (2) 352; *Gay vs. U. S.*, 12 Fed. (2) 433; *Moore vs. U. S.*, 57 Fed. (2) 840; *Cook vs. U. S.*, 117 Fed. (2) 374.

ASSIGNMENT OF ERROR

1. The United States Court of Appeals for the Fifth Circuit erred in sustaining the Trial Court's refusal to grant a judgment of acquittal, seasonably requested by petitioner, because:

(a) There was no evidence to show that this petitioner had any knowledge that an offense against the United States had been committed.

(b) There was no evidence to show that this petitioner did anything to receive, relieve, comfort or assist the principal in order to prevent the said principals' apprehension, trial or punishment in a court of the United States.

(c) There was no evidence to show that this petitioner had any knowledge that the arrest of the principal was being sought by either City Police Officers, or any other kind of officers for the commission of any offense against the United States of America, or for any offense whatever.

2. The United States Court of Appeals for the Fifth Circuit erred in sustaining the Trial Court's action in adjudging this petitioner guilty of the offense charged, bacause:

(a) There was no evidence to show that Petitioner had any knowledge that an offense against the United States had been committed.

(b) There was no evidence to show that petitioner did anything to receive, relieve, comfort or assist the principal in order to hinder or prevent the said principal's apprehension, trial or punishment in a Court of the United States.

(c) There was no evidence to show that petitioner had any knowledge that the arrest of the principal was being sought by either City Police Officers or any other kind of officers.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

1. The opinion of the United States Court of Appeals for the Fifth Circuit in affirming this cause is in direct conflict with this Honorable Court's opinion in the case of *Pettibone vs. United States*, 148 U. S., 197.

2. The opinion of the United States Court of Appeals for the Fifth Circuit in this case is in direct conflict with the opinion of the United States Court of Appeals for the Eighth Circuit in *Fullbright vs. U. S.*, 91 F. (2) 210.

3. The Opinion of the United States Court of Appeals for the Fifth Circuit in this case is in direct conflict with the opinions heretofore rendered by it, and particularly with *Hargett vs. U. S.*, 183 F. (2) 859.

4. The United States Court of Appeals for the Fifth Circuit in its opinion in this case has so far departed from the accepted and established standards for judicial proceedings, and has sanctioned such departure by the lower Court as to require and call forth this Court's power of supervision and revision to the end that uniformity of decisions be obtained, and that settled principles of Judicial Procedure and safeguards long established as essential to a fair trial be not broken down.

5. Since this is a case a conviction in which the Government relied solely on circumstantial evidence, the action of the United States Court of Appeals for the Fifth Circuit in sustaining the Trial Court's refusal to render

a judgment of acquittal is in direct conflict with the well established rules of decisions heretofore rendered by the United States Court of Appeals for the Fifth Circuit as well as decisions of the various other United States Courts of Appeal.

6. The action of the United States Court of Appeals in affirming this cause disregards the well established principal that Scienter is an absolute requisite to due process of law which is applicable in those cases where a person is charged with the obstruction of justice in a Court of the United States, or, as in the case at bar, where a person is charged as being an Accessory after the Fact in violation of Sec. 3, Title 18, U.S.C.A., and such holding is in direct conflict with the opinion of this Court in the case of *Pettibone vs. U. S.*, 148 U.S., 197; and with the opinions of the United States Court of Appeals for the Fifth Circuit as expressed in the following cases: *Hargett vs. U. S.*, 183 Fed. (2) 859; *Odom vs. U. S.*, 116 Fed. (2) 996; *Palmquist vs. U.S.*, 149 Fed. (2) 352; *Gay vs. U.S.*, 12 Fed. (2) 433; *Moore vs. U. S.*, 57 Fed. (2) 840 and *Cook vs. U. S.*, 117 Fed. (2) 374; and is, also, in conflict with the opinion of the United States Court of Appeals for the Eighth Circuit in the case of *Fullbright vs. U. S.*, 91 Fed. (2) 210, and such action of the said United States Court of Appeals for the Fifth Circuit amounts to such a departure from the accepted and usual course of judicial proceedings and has so far sanctioned such a departure by a lower Court as to call for exercise of this Court's power of supervision.

CONCLUSION

In this case the Government relied wholly upon circumstantial evidence for conviction. The record reflects that petitioner and a woman companion went to the home of the principal and his wife for the purpose of petitioner's woman companion seeing about purchasing some dresses from the wife of the principal. (Tr. 64, 65, 66, 76, 77). For this purpose petitioner and his woman companion went to the home of the principal March 16th, 1951, arriving there about 8:30 P.M. (Tr. 64, 65). The dresses were purchased from the principal's wife, and after this transaction was consummated, petitioner and his companion and the principal and his wife went to a neighborhood picture show together. (Tr. 65, 76, 77, 78). They all returned to the principal's home, after having attended the picture show, arriving back there about 11:45 P. M. (Tr. 17, 54, 65). Petitioner and his companion had a twofold purpose for going back into the home of the principal upon their return from the picture show, towit: (1) to get the dresses theretofore purchased by petitioner's companion, and (2), that petitioner might use the bath room in response to a call of nature. (Tr. 66, 78, 79). Petitioner and his companion and the principal and his wife had only been in the principal's home just a very few moments when four plainclothed officers of the City of Dallas, Texas, made their appearance. (Tr. 66, 67, 68, 77, 78, 79, 80). In fact the officers were waiting the return of principal. (Tr. 16, 17, 18, 19, 20, 39, 40, 54, 55).

pal's home from the
Three of the officers came into principal's the rear. (Tr. 11,
front, and one gained entrance from the ote here that peti-
12, 40, 54, 67). It is important to note in response to the
tioner was already in the bath room in made their appear-
call of nature, when the four officers mad0). None of these
ance and entry. (Tr. 66, 67, 78, 79, 80). s to their identities
City Officers made any announcement as to , but on the con-
before entering the home of principal, b t porch or at the
trary, one of them, while on the front p am" or "Western
front of the house, called out "Telegram Tr. 32, 33, 35, 59,
Union" or words of similar import. (Tr. ity Officers called
67, 71, 80, 85). When one of these City he wife of princi-
out "Telegram" or "Western Union", the t which time, some
pal opened the front door of her home, at w door to the home
of the officers tore off the front screen d 56, 67). The prin-
and rushed into the house. (Tr. 19, 35, 66, upon ran immedi-
cipal, George Everett Thomas, Jr., thereup ise and locked the
ately to the small bath room of the house 0, 91). Petitioner
bath room door. (Tr. 67, 79, 80, 84, 90, e principal forced
was already in the bath room when the p 91). Immediately
his entrance. (Tr. 66, 67, 78, 79, 90, 91 room, the officers
upon the principal's entry to the bath roo bath room door.
began breaking and forcing open the b rs' forcible entry
(Tr. 11, 22, 68, 80). Upon the officers' ipal leaning over
of the bath room, they found the princip bowl of the com-
the commode, with one hand down in the b avatory. (Tr. 13,
mode, and with the other toward the lav ear the commode
14, 24, 29, 41, 56). Petitioner was not ne

or lavatory, but was pinned back of the door against the wall, about the only place he could have been due to the smallness of the bath room. (Tr. 13, 14, 23, 24, 29, 41, 47, 56, 61, 62, 80, 25). At no time was petitioner seen by anyone to hold the door or to do anything to prevent the City Officers' entrance to the bath room. (Tr. 22, 25, 26, 29, 33, 47, 62, 80, 84, 91). Petitioner was in no way assisting or aiding the principal's apparent effort to flush the marihuana down the commode. (Tr. 13, 14, 23, 24, 29, 41, 47, 61, 62, 80, 85). Petitioner did not resist arrest nor assist anyone else in resisting arrest. (Tr. 25, 26, 29, 49, 62, 100). No one resisted or attempted to resist arrest, but all were very courteous. (Tr. 100). It was only after the City Officers had broken open the bath room door and served a copy of a State Search Warrant on the principal that their identities became known to petitioner. (Tr. 35, 36). Petitioner did not lock the bath room door, but the principal did after he had entered. (Tr. 79, 80, 81). No Federal Officer accompanied the Four Plainclothed City Policemen, nor did any one have in their possession any Federal Process.

It was upon the foregoing facts which have been purposely briefly and concisely stated and which are set forth in more detail in our accompanying supporting brief, that the Trial Court adjudged petitioner guilty of being an accessory after the fact (Sec. 3, Title 18, U.S.C.A.), and in which finding the United States Court of Appeals for the Fifth Circuit concurred contrary to the accepted

and established standards for judicial proceedings, and contrary to the decisions of this Court and the decisions of not only the said Court of Appeals for the Fifth Circuit, but, also, the decisions of the Courts of Appeal for other Circuits, which have hereinbefore and shall be hereinafter referred to and set forth. Such facts wholly fail to show that this petitioner knew:

(a) That the principal had committed any offense against the United States. Or

(b) That the said principal would be ultimately indicted and tried for any offense in a court of competent jurisdiction of the said United States. Or

(c) That the person or persons who were endeavoring to gain entrance to the bath room were officers of any description, because it is indisputably shown from the record that the plain-clothed city police officers did not make their identities known until after they had gained entrance to such bath room and that instead of properly identifying themselves, as officers, as they should have done, they endeavored to lead the occupants of the house to believe they were representatives of Western Union.

And further, there is not one scintilla of evidence to show that this petitioner did a single act, either of commission or omission, to receive, relieve, comfort or assist the said principal in order to prevent said principal's arrest, trial and punishment in a Court of the United States, which is an absolute requisite under the aforesaid Section

3, Title 18, U.S.C.A., or, for that matter, i
Court, which would be absolutely immaterial other
the jurisdiction of any Court of the United S far as
cerned. *Pettibone vs. U. S.*, 148 U.S. 197; *F* is con-
U. S., 91 Fed. (2) 210; *Hargett vs. U. S.*, (*ight vs.*
Fed. (2) 859. r.) 183

The Per Curiam opinion of the Court of App
Circuit, does not discuss the matters herein a Fifth
the allowance of this Writ of Certiorari, though ed for
points were properly raised and argued before i of such
presented in the record of this case accompa d fully
Petition. The effect of such holding of the sai g this
Appeals allows this petitioner to stand convicte urt of
to and in violation of: ntrary

(a) The due process clause of the Fift
ment of the Constitution of the United States. Amend-

(b) The rules of decisions of this Cou
tained in this Court's opinion in the case of *Pe* as con-
U. S., 148 U.S., 197; the opinion of the Unit *one vs.*
Court of Appeals for the Eighth Circuit in th States
Fulbright vs. U. S., 91 Fed. (2) 210; the opi case of
decisions of the United States Court of Appea ns and
Fifth Circuit in the following cases; *Hargett vs.* for the
Fed. (2) 859; *Odom vs. U. S.*, 116 Fed. (2) 9 S., 183
quist vs. U. S., 149 F. (2) 352; *Gay vs. U. S.*, Palm-
433; *Moore vs. U. S.*, 57 F. (2) 840 and *Cook* F. (2)
U. S.,

177 F. (2) 374; and the opinion of the United States Court of Appeals for the Seventh Circuit in the case of *U. S. vs Taylor*, 57, F. 391; and the opinion of the United States Court of Appeals for the Eighth Circuit in the case of *Walker vs. U. S.*, 93 F. (2) 792, and such a holding specifically and utterly disregards that well recognized principal of law, which was adopted and favorably referred to by the said United States Court of Appeals for the Fifth Circuit in the case of *Hargett vs. U. S.*, 183 F. (2) 859; and which said principal appears in 39 Amer. Jur., Obstructing Justice, Section 13 as follows:

> "If an officer does not disclose his authority and the accused does not know that he is an officer and is attempting to arrest him for an offense, he has a right to resist with whatever force is necessary."

Petitioner most respectfully urges such action of the trial Court in finding petitioner guilty and of the United States Court of Appeals for the Fifth Circuit in affirming such action presents clear error, and takes this case out of the well settled rules of this Honorable Court that the concurrent findings of the lower courts on questions of fact will not be disturbed. Furthermore this petition is sought, in addition to other reasons herein set out, because of the conflict with the decisions in the different United States Courts of Appeal, which, also, takes it out of the rule of concurrent findings of two lower courts.

WHEREFORE, petitioner prays that the Writ of Certiorari issue; that the cause be reviewed by this Honorable Court, and that the judgment of the trial court and the United States Court of Appeals be reversed.

.....

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SUPPORTING BRIEF

To the Honorable, the Supreme Court of the United States:

I.

The United States Court of Appeals for the Fifth Circuit rendered no written opinion, but affirmed the action of the Court below by a per curium order, (R. 111), June 2nd, 1952. Petition for Re-hearing was seasonably filed, and was also overruled July 2nd, 1952, by per curium order. (R. 113 & 121)

JURISDICTION

Jurisdiction of this Honorable Court is invoked under Section 1254, U.S.C.A. The original opinion of the United States Court of Appeals for the Fifth Circuit was filed on June 2nd, 1952. Petition for rehearing was denied on July 2nd, 1952.

STATEMENT OF THE CASE

The statement contained in the Petition for Writ of Certiorari, in support of which this brief is presented, is here adopted, and will not be repeated, except as may hereinafter be appropriately done in connection with the argument to be presented.

SPECIFICATIONS OF ERROR

1. The United States Court of Appeals for the Fifth Circuit erred in sustaining the Trial Court's refusal to grant a judgment of acquittal, seasonably requested by petitioner, because:

(a) There was no evidence to show that this petitioner had any knowledge that an offense against the United States had been committed.

(b) There was no evidence to show that this petitioner did anything to receive, relieve, comfort or assist the principal in order to prevent the said principals' apprehension, trial or punishment in a court of the United States.

(c) There was no evidence to show that this petitioner had any knowledge that the arrest of the principal was being sought by either City Police Officers, or any other kind of officers for the commission of any offense against the United States of America, or for any offense whatever.

2. The United States Court of Appeals for the Fifth Circuit erred in sustaining the Trial Court's action in adjudging this petitioner guilty of the offense charged, bacause:

(a) There was no evidence to show that Petitioner had any knowledge that an offense against the United States had been committed.

(b) There was no evidence to show that petitioner did anything to receive, relieve, comfort or assist the principal in order to hinder or prevent the said principal's apprehension, trial or punishment in a Court of the United States.

(c) There was no evidence to show that petitioner had any knowledge that the arrest of the principal was being sought by either City Police Officers or any other kind of officers.

STATUTES INVOLVED:

The principal, George Everett Thomas, Jr., in cause No. 12,737, Criminal, was charged by indictment containing one Count, which alleged that Thomas did, on or about March 16th, 1951, in Dallas County, Texas, unlawfuly acquire and obtain approximately 83 grains of Marihuana without the said Thomas having paid the transfer tax thereon. This indictment is predicated upon Section 2593 (a) of Title 26, U.S.C., which Section reads as follows:

"Section 2593 (a) Persons in General. It shall be unlawful for any person who is a transferee required to pay the transfer tax imposed by Section 2590 (a) to acquire or otherwise obtain any marihuana without having paid such tax; and proof that any person shall have had in his possession any marihuana and shall have failed, after reasonable notice and demand by the Collector, to produce the order form required by Section 2591 to be retained by him, shall be presumptive evidence of guilt under this Section and of liability for the tax imposed by Section 2590 (a)."

Sec. 2592. Stamps. Subsection (2) of Title 26, U.S.C.A., reads and provides as follows:

"Affixing. The stamps provided in Section 2590 (c) (1) shall be affixed by the collector or his representative to the original order form."

(In this particular, we respectfully call this Court's attention to the fact that there is no legal requirement for affixing tax stamps to the immediate containers of marihuana, and that the absence of such stamps from any container of marihuana in no way places a person upon notice that the same may have been acquired or obtained contrary to the laws of the United States.)

The Petitioner, having waived indictment, was charged by and tried upon an information containing one Count. By such information, Petitioner was charged as an accessory after the fact, and which charge is based upon Section 3 of Title 18 U.S.C. As heretofore stated, such information, in substance, charges that Petitioner, well

knowing that the principal, George Everett Thomas, Jr., on or about the 16th day of March, 1951, in Dallas County, Texas, did unlawfully and knowingly, in violation of the Marihuana Tax Act of 1937, acquire and obtain approximately 83 grains of marihuana without the said George Everett Thomas, Jr., having paid the transfer tax thereon at the time of such acquisition, did unlawfuly and knowingly and wilfully assist the said principal, George Everett Thomas, Jr., in order to hinder and prevent the said principal's apprehension and trial and punishment. This Statute, upon which the aforesaid information is based, and with which we are primarily concerned here, reads as follows:

> "Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.
>
> 'Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of punishment or fined not more than one-half the maximum fine prescribed for the punishment of the by death, the accessory shall be imprisoned not more by death, the accesory shall be imprisoned not more than ten years."

I

Where circumstantial evidence is relied upon by the prosec ution for a conviction in a criminal case, the links

in the chain of such evidence must be clearly proven, and taken together, must point, not to the possibility or probability, but to the moral certainty of guilt, and such evidence must not only be consistent with guilt but inconsistent with every reasonable hypothesis of innocence.

AUTHORITIES:

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Neal vs. U. S., 102 Fed. (2nd) 643;

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Fullbright vs. U. S., 91 Fed. (2nd) 210;

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Crain vs. U. S., 148 Fed. (2nd) 617 (5 Cir);

Cantrell vs. U. S., 158 Fed. (2nd) 517 (5 Cir);

Garrison vs. U. S., 163 Fed. (2nd) 874, (5 Cir);

Cooper vs. U. S., 91 Fed. (2nd) 195 (5 Cir);

Huby vs. U. S., 150 Fed. (2nd) 167 (5 Cir);

Dennert vs. U. S., 147 Fed. (2nd) 286.

STATEMENT AND ARGUMENT:

The position taken by the Government in this case, whereby they did not elect to proceed against this Petitioner as a co-defendant with the Principal, George Everett Thomas, Jr., in the main charge of having acquired and obtained the marihuana contrary to law, can, without a doubt, be taken as an admission by the prosecution that

Petitioner ha dnothing whatever to do with that particular offense. Moreover, we think that the evidence is wholly insufficient to show that Petitioner had knowledge that an offense against the United States had been committed as will hereinafter be pointed out. Certainly, the evidence is wholly insufficient to show that this Petitioner, in any way or in any manner, received, relieved, comforted or assisted the principal in order to hinder or prevent the principal's apprehension, trial or punishment.

The evidence upon which the prosecution relies for a conviction of Petitioner as an accessory after the fact is, beyond any question, absolutely and purely circumstantial in its nature. The Record shows that Petitioner and a woman companion went to the home of the principal and his wife for the purpose of Petitioner's woman companion seeing about purchasing some dresses from the wife of the principal. (Tr. 64, 65, 66, 76, 77). For this purpose, the Petitioner and his woman companion went to the home of the principal on the date of March 16th, 1951, arriving there about 8:30 P.M. (Tr. 64, 65). The dresses were purchased from the principal's wife, and after this transaction was consummated, the Petitioner and his companion and the principal and his wife all went to a neighborhood picture show together. (Tr. 65, 76, 77, 78). They all then returned to the principal's home, after having attended the picture show, arriving back there about 11:45 P.M. (Tr. 17, 54, 65). Petitioner and his companion of the evening had a two-fold purpose for going into the

home of the principal upon their return from the picture show, which reasons were: (1) to get he dresses which had been purchased from the principal's wife, and (2) in order that Petitioner could use the ath room in response to a call of nature. (Tr. 66, 78 79). The Petitioner and his companion, and the prin pal and his wife had only been in the principal's home just a very few moments when the four plainclothed of cers of the City of Dallas, Texas, made their appearance (Tr. 66, 67, 68, 77, 78, 79, 80). In fact, these four ain-clothed City Officers were awaiting the return of t principal. (Tr. 16, 17, 18, 19, 20, 39, 40, 54, 55). T ee of these City Officers came into the principal's hon from the front and one City Officer gained entrance the house from the rear. (Tr. 11, 12, 40, 54, 67). It is important to note here that the Petitioner was already i he bath room of principal's home, in response to a ca of nature, when these four plain-clothed City Officers de their appearances and entry. (Tr. 66, 67, 78, 79,). None of these City Officers made any announcement s to their identities before entering the home of the p cipal, but on the contrary, one of them, while on the fr porch or at the front of the house, hollered "Teleg n" or "Western Union" or words of similar import. 32, 33, 35, 59, 67, 71, 80, 85). When one of these C Officers hollered "Telegram" or "Western Union", th ife of the principal opened the front door of her h , at which time, some of these City Officers tore off t front screen door

to the home and rushed into the house. (Tr. 19, 35, 66, 67). The principal, George Everett Thomas, Jr., thereupon ran immediately to the small bath room of the house and locked the bath room door. (Tr. 67, 79, 80, 84, 90, 91). As heretofore stated, Petitioiner was already in the bath room. (Tr. 66, 67, 78, 79, 90, 91). The principal had only been in the bath room a few seconds, where Petitioner was, before the City Officers began forcing or breaking open the bath room door. (Tr. 11, 22, 68, 80). When the Officers forced the bath room door open, they found the principal leaning over the commode, with one of his hands down in the bowl of the commode and with the other toward the lavatory. (Tr. 13, 24, 29, 41, 56). Before forcing this bath room door open, some of these City Officers stated that they could hear a sound as though the commode was being flushed, or as though some one was trying to flush it. (Tr. 11, 12, 40, 41). It was a very small bath room (Tr. 82, 83, 84), and when the officers had forced the door open, they did not find the Petitioner near the commode, but he was pinned back of the door against the wall, which was about the only place he could possibly have been due to the extreme smallness of the bath room. (Tr. 13, 14, 23, 24, 29, 41, 47, 56, 61, 62, 80, 25). At no time was this Petitioner seen by the officers, or by any one else, to hold the door or to do anything to prevent the City Officers from gaining entrance to the bath room. (Tr. 22, 25, 26, 29, 33, 47, 62, 80, 84, 91). When the officers had forced the bath room door

open, the Petitioner was found back against the bath room wall, away from the commode and the lavatory, and in no way assisting the principal who was over the commode bowl, apparently trying to flush the marihuana through. (Tr. 13, 14, 23, 24, 29, 41, 47, 61, 62, 80, 85).

That all four of these City Officers were plain-clothed officers working for the City of Dallas, Texas, will be undisputed. (Tr. 10, 38, 53, 54). It will, also, be undisputed that not a single Federal Officer was present. It is, also, indisputably shown from the Record that at no time did any one of these City Officers make known or announce to any one, either before actually entering the house of the principal or while the officers were forcing open the bath room door, that they were City Officers or any other kind of officers. (Tr. 32, 33, 35, 59, 67, 71, 85). Instead, and quite to the contrary, it was admitted by one of these City Officers that he did say something about a "telegram" or "Western Union" or something like that, when the officers first made known their presence at the home of the principal. (Tr. 35, 67).

It is, also, of the utmost importance to note that it is admitted by the officers in their testimony that this Petitioner not only did not resist the arrest of himself, but that he was not observed and that he did not assist any of the other persons, including the principal, in resisting arrtst. (Tr. 25, 26, 29, 49, 62, 100). In fact, there was not only any resisting of arrest, but one of the officers

testified that no one was discourteous in the slightest. (Tr. 100).

It was only after the City Officers had broken open the bath room door, when they served a copy of the State Search Warrant upon the principal, that their identities became known to this Petitioner. (Tr. 35, 36). Again, we wish to call to this Court's attention that it was the principal and not this Petitioner who had locked the bath room door, and this was done by the principal after he had intruded upon Petitioner's privacy while he was in the bath room in response to a call of nature, the Petitioner having entered the bath room prior to the unanticipated and unannounced arrival of the four City Police Officers, and, also, prior to the principal's entrance into such bath room. (Tr. 79, 80, 91). After the principal entered the bath room, he had his back to this Petitioner the principal having pushed him aside, and this Petitioner could not see what the principal was doing at the commode and wash basin or lavatory. (Tr. 79, 90, 91). During the short time from the entrance of the principal into the bath room until the officers forced the door of the bath room open, the principal, aside from shoving the Petitioner and telling him to get out of the way, not a word was spoken by the principal to the Petitioner. (Tr. 90, 91, 95). And since it was only a moment or so after the principal's entrance into the bath room until the City Officers forced the door thereof open, this Petitioner could not have had time to have fully grasped

the situation and the very rapid happening of events. (Tr. 22, 68, 80).

It was upon the foregoing facts, which are entirely and purely circumstantial in their nature, that the lower Court adjudged this Petitioner guilty of having been an accessory after the fact, in that, this Petitioner, well knowing that an offense against the United States had been committed, did unlawfully, wilfully and knowingly assist the principal, George Everett Thomas, Jr., in order to hinder the principal's arrest by the four plain-clothed City Police Officers, and his subsequent trial and punishment in some Court. We here use the words "some Court" advisedly because there was certainly nothing at any time to put this Petitioner, or any one else, on notice that the principal would be ultimately tried in a Court of the United States, which point is very important and which will be discussed under No. II of this brief.

We say that all of the substantial evidence, taken as a whole, is absolutely and wholly insufficient to sustain the conviction of the Petitioner in this case. As was stated by the United States Court of Appeals for the Fifth Circuit, in the case of *Kassin vs. U. S.*, 87 Fed. (2d) 183, opinion by Mr. Justice Hutcheson:

> "* * * That is, the evidence must have a legitimate tendency to compel belief in and a finding of defendants' guilt. It may not consist merely of circumstances having such a remote relation to the facts to be proved as that they have not a probable, but only

a posible, relevance. Circumstantial evidence can, indeed, forge a chain of guilt and draw it so tightly around an accused as almost to compel the inference of built as a matter of law. Again, circumstantial evidence may forge the chain and draw it tight by legally justifiable, rather than absolutely compelling, inferences. In each case, however, where the evidence is purely circumstantial, the links in the chain must be clearly proved, and taken together, must point, not the possibility or probability, but to the moral certainty of guilt. That is, the inferences which may reasonably be drawn from them as a whole must not only be consistent with guilt, but inconsistent with every reasonable hypothesis of innocence. Paddock vs. U. S., 79 Fed. (2) 872; De Luca vs. U. S., 298 Fed. 412; Wright vs. U. S., 227 Fed. 855 * * *.

"One of the prime rules in the trial of criminal cases is that circumstances, when relevant and cogent, may constitute evidence of guilt, but they must have a legal, as well as a logical, relevancy, and they must point with compelling force to the fact to be proved. Circumstances which merely raise suspicion or give room for conjecture are not suficient evidence of guilt. Wharton on Evidence, p. 1532. A conviction resting on them alone cannot stand. * * *"

Again, in the case of *Garrison vs. U. S.*, 163 Fed. (2nd) 874, the same Court stated:

"Pointing out that the evidence was wholly circumstantial and insisting that it was not sufficiently cogent to convict him, he is here urging upon us that the Court erred in not directing a verdict in his favor.

> "A careful examination of the record convinces us that Appelant's point is well taken. We think it is clear that it cannot be said of the evidence that it pointed unerringly to Appellant's guilt and that it was inconsistent with any other hypothesis. The most that can be said of the evidence in the Government's favor is that some of the circumstances were sufficient to raise a suspicion of Appellant's guilt, and this, according to settled rules, is not sufficient. It will serve no useful purpose to consider or discuss circumstanial evidence cases. The principle governing them is well settled, and each case rests upon, and must be determined by its own facts. If the defendant was guilty as charged, it was the Government's duty to prive that he was. Verdicts may not be based upon a surmise and suspicion."

In the case of *Neal vs. U. S.*, 102 Fed. (2nd) 643, at page 648, the Court said:

> "* * *and when all of the substantial evidence is as consistent with innocence as it is with guilt, it is the duty of the Appellate Court to reverse a conviction." Citing Shama vs. U. S., 94 Fed. (2nd) 1; Fullbright vs. U. S., 91 Fed. (2nd) 210; Haning vs. U. S., 21 Fed. (2nd) 508; Wright vs. U. S., 227 Fed. 855.

In the Neal Case, supra, the Appellant was convicted on two counts of an Indictment, one of which charged Appellant as having been an accessory after the fact. The Appellate Court in that case found the evidence to be insufficient to sustain the conviction, and it is our opinion that the evidence in that case was much more convincing and substantial than the evidence in the case at Bar. In

the Neal case, the Court stated, in speaking of the accessory after the fact charge, that it was incumbent upon the Government to prove beyond a reasonable doubt (1) That the principal had committed an offense under the Federal Laws; (2) That the Appellant had knowledge that the principal had so committed this exact offense, and (3) That Appellant having such knowledge, aided and abetted the principal to escape apprehension, trial and punishment.

We say that the evidence in the instant case absolutely fails to show that this Petitioner had any knowledge that the principal, Thomas, had committed an offense against the United States. Had the Appellant known the identities of the four plain-clothed City Police Officers, which he did not, then this would not have been sufficient to put the Petitioner on notice that the principal had violated some law of the United States. Had the Petitioner known the identities of the four City Officers, it would have been more reasonable for him to have assumed that some one may have violated a City Ordinance or some State Law—but not a Federal Law. The Petitioner was already in the small bath room when the principal rushed in and endeavored to flush the marihuana through the commode. (Tr. 66, 67, 68, 78, 79, 80, 90, 91). And, moreover, the evidence does not show that this Petitioner did anything to prevent the arrest of the principal, but on the contrary, it is admitted by the City Officers who were making the arrest, that Petitioner did nothing to resist

either the arrest of himself or the arrest of any other person. (Tr. 25, 26, 29, 49, 62, 100). The Record shows that this Petitioner had no way of knowing that the persons who were endeavoring to get into the small bath room were officers of any description because it is shown from the evidence, without dispute, that not one of these four plain clothed City Police Officers made known their identities until after the door to the bath room had been broken open. (Tr. 32, 33, 35, 36, 59, 67, 71, 85). On the contrary, the officers used a subterfuge and endeavored to lead the occupants of the principal's home to believe that they were not in fact officers but were there to deliver a telegram. (Tr. 35, 67).

As was stated by the Court in the case of *Haning vs. U. S.*, 21 Fed. (2nd) 508:

> "When all the substantial evidence is as consistent with innocence as with guilt, it is the duty of the Appellate Court to reverse a judgment of conviction." Citing Vernon vs. U. S., 146 Fed. 121; Wright vs. U. S., 227 Fed. 855; Edwards vs. U. S. 7 Fed. (2nd) 357; Siden vs. U. S., 9 Fed. (2nd) 241; Ridenour vs. U. S., 14 Fed. (2nd) 888.

We wish to here emphasize that this Petitioner should not, and cannot, be convicted upon mere suspicions, conjectures, and surmises. As was stated by the Court in the case of *Gerson vs. U. S.*, 25 Fed. (2nd), at pages 60 and 61:

> "* * *but this is a criminal case, where men's liberty is at stake, and, while natural inferences may

> be drawn from circumstances, such inferences cannot be substituted for circumstances. That the case is full of circumsances more or less suspicious may be conceded. * * * The circumstances shown are not such as to exclude every reasonable hypothesis but that of guilt of the accused, nor are they less compatibile with innocence than with guilt. The judgment of conviction as to all the defendants is set aside. * * *".

And in the Kassin case, supra the United States Court of Appeals for the Fifth Circuit stated:

> "Circumstances which merely raise suspicion or give room for conjecture are not sufficient evidence of guilt. Wharton on evidence, p. 1532. A conviction resting on them alone cannot stand."

Also, in the case of *Sherman vs. U. S.*, 268 Fed. 516, the same Court, in speaking of circumstantial evidence, stated:

> "The case is purely one of circumstantial evidence, and the rule in such cases is that the proof shall exclude every other reasonable hypothesis except the guilt of the accused. Wright vs. U. S., 227 Fed. 855; Garst vs. U. S., 180 Fed. 339; Vernon vs. U. S., 146 Fed. 121.
>
> "It would be establishing a dangerous precedent to hold that the proof in the case is sufficient to support a verdict of guilty. * * *"

So would it be establishing a dangerous precedent in the instant case to hold that such flimsy evidence as is relied upon by the Government is sufficient to support the lower Court's judgment of guilty that was entered

against this Petitioner. That the Petitioner was the victim of a chain of unpleasant circumstances is reflected most forcibly from the Record in this cause. To hold that such evidence is sufficient to sustain this Petitioner's conviction will have to be done on mere suspicisions, surmises. conjectures and suppositions. Such a holding would be tantamount to placing the burden on the Petitioner of establishing his innocence, which is certainly not in harmony with requisites of due process of law.

In the case of *Patterson vs. U. S.*, 62 Fed. (2nd) 969, the Court stated:

> "* * * A conviction is required to be based on substantial evidence, as distinguished from suspicion. The evidence should be more consistent with guilt than innocence, and exclude any reasonable hypothesis."

The Petitioner took the stand and testified in his own behalf. He gave the over all dimensions of the bath room as being 6'10" long and 4'11" wide. The bath tub occupied one end of this bath room. (Tr. 28, 42, 82, 83, 84). The commode protrudes out from the wall approximately 31" and the lavatory extends out approximately 19,". (Tr. 82, 83, 84). The lavatory or wash basin is located immediately to the right as one enters the bath room, and then next to the wash basin, on the same side of the bath room, is the commode. The right side of the bath room is taken up entirely by the lavatory, the commode and one end of the bath tub. The dimensions of this small bath room

and the location of the fixtures therein, as related by the Petitioner, is substantiated by a sketch thereof which was introduced by the Petitioner during the trial and which sketch appears of record on page No. 82 of the Transcript. The door leading into the bath room is 26" wide, and when opened, if a person were standing in front of the wash basin or the commode, they would be struck by the door. When the officers forced the door of the bath room and gained entrance thereto, the principal was found in front of or leaning over the commode. (Tr. 13, 24, 29, 41, 56). The bath room was so small that it was necessary for the officers to "let the door out some" for the Appellant to get out. (Tr. 14). The Petitioner was not near the commode where the marihuana was found, but was pinned behind the door and against the wall, entirely away from the commode and lavatory. (Tr. 13, 14, 23, 24, 29, 41, 47, 56, 61, 62, 80, 85). Unless Petitioner had gotten into and stood in the bath tub, this was about the only place he could have been because of the smallness of the bath room. When the officers entered the bath room, the Petitioner had nothing whatever in his hands. (Tr. 24, 29, 47, 62). During the few moments it required for these City Officers to force open the door leading to the bath room, one of such officers testified that the door opened just about four inches and he then saw the principal, Thomas, "leaning over, with one hand on the knob of the commode, and the other on the faucet of the lavatory." (Tr. 40, 46). If the principal, Thomas, was thus standing, then the

door of the bath room would have struck his body when the officers tried to open it. (Tr. 51, 84). One of the officers, also, testified that the principal, Thomas, had one hand on the faucet to the lavatory and the other hand was down in the commode trying to rake the marihuana down into the commode. (Tr. 13, 41). Again, we say that the Petitioner was standing back up against the wall away from both the commode and the lavatory and was doing nothing whatever when the officers gained entrance into this very small bath room. (Tr. 13, 14, 23, 24, 29, 41, 47, 61, 62, 80, 85). And, again we say that, according to the undisputed testimony as to where this Petitioner and the principal were situated inside of the bath room when the officers gained entrance thereto the door of the bath room would have been striking the body of the principal, Thomas, and not the body of the Petitioner. (Tr. 51, 84). The Petitioner testified that during the few moments it took for the City Officers to gain entrance into the bath room, that he, the Petitioner, was standing "flat against the wall". (Tr. 84, 85). The City Officers admitted that they never at any time announced their identities to any person until after they had broken open the bath room door. (Tr. 32, 33, 55, 59). Petitioner, also, testified that he did not know that they were officers, (Tr. 85), and that he had no way of knowing who was trying to get into the bath room. (Tr. 80, 85). Petitioner, also, testified that he did nothing to prevent the arrest of the principal. (Tr. 84, 85). This is most forcibly borne out by the testi-

mony of the officers themselves. (Tr. 25, 26, 29, 49, 62, 100). Petitioner did not know that the principal, Thomas, was in possession of any marihuana. (Tr. 79, 85, 91). And there is no evidence in the record to the contrary. This particular point is greatly emphasized by the fact that the Government made no apparent effort to try Appellant along with the principal, Thomas, for the unlawful acquisition of the marihuana. Petitioner did not see what was in the hands of the principal, Thomas, at the time Thomas rushed into the bath room. (Tr. 79, 85). When the principal, Thomas, rushed into the bath room, he, and not this Petitioner, locked the bath room door. (Tr. 79, 91). Petitioner testified that he was not holding the door, (Tr. 80, 84, 85, 86, 91), and there is no legal evidence to the contrary, unless mere suspicions, conjectures, suppositions and opinions are to be accepted.

We wish to challenge the trial Court's statement to the effect that "the normal and natural thing for the defendant LeForce would have been to have stepped out of the bath room", which statement appears on page No. 102 of the Transcript. Why should Petitioner have stepped out of the bath room when he was not informed and did not know who was trying to get into the bath room, and when Petitioner was there in the bath room for a legitimate purpose, which was in response "to a call of nature"? The man of the house was in this bath room with Petitioner, and if any one should have opened the door in response to

any knocking that took place, it seems hat it would have been for the principal, Thomas, ve done this and not the Petitioner, who was a gues e principal's home. In other words, the Governmen e rests upon the proposition that Petitioner was in ath room at the same time with the principal. Thi nding alone, even though it raises a suspicion, is insu nt to sustain the conviction of the Petitioner. It is own by any evidence whatever, aside from suspici rmises, conjectures and suppositions, that Petitione one thing to prevent the apprehension, trial and p ment of the principal, Thomas. Moreover, it was n own by any proof that Petitioner knew that the princ Thomas, had committed any offense against the Unit ates, or any other kind of offense, and it was not sh y any proof that Petitioner knew that the persons en ring to gain entrance into the bath room were officers ny kind, but on the contrary, it is undisputed, and i admitted by these plain-clothed City Officers themsel that they at no time made their identities known to t Petitioner or any one else. (Tr. 32, 33, 35, 36, 59). as has been hereinbefore pointed out, the officers d heir utmost to conceal their real identities. (Tr. 35,

As was stated by the Court in the case *Fox vs. U. S.*, 96 Fed. (2nd), at page 43:

> "• • • Evidence which is consisten ith two conflicting hypothesis tends to prove ne er. Gunning vs. Cooley, 281 U. S., 90; Stevens vs. White City,

mony of the officers themselves. (Tr. 25, 26, 29, 49, 62, 100). Petitioner did not know that the principal, Thomas, was in possession of any marihuana. (Tr. 79, 85, 91). And there is no evidence in the record to the contrary. This particular point is greatly emphasized by the fact that the Government made no apparent effort to try Appellant along with the principal, Thomas, for the unlawful acquisition of the marihuana. Petitioner did not see what was in the hands of the principal, Thomas, at the time Thomas rushed into the bath room. (Tr. 79, 85). When the principal, Thomas, rushed into the bath room, he, and not this Petitioner, locked the bath room door. (Tr. 79, 91). Petitioner testified that he was not holding the door, (Tr. 80, 84, 85, 86, 91), and there is no legal evidence to the contrary, unless mere suspicions, conjectures, suppositions and opinions are to be accepted.

We wish to challenge the trial Court's statement to the effect that "the normal and natural thing for the defendant LeForce would have been to have stepped out of the bath room", which statement appears on page No. 102 of the Transcript. Why should Petitioner have stepped out of the bath room when he was not informed and did not know who was trying to get into the bath room, and when Petitioner was there in the bath room for a legitimate purpose, which was in response "to a call of nature"? The man of the house was in this bath room with Petitioner, and if any one should have opened the door in response to

any knocking that took place, it seems to us that it would have been for the principal, Thomas, to have done this and not the Petitioner, who was a guest in the principal's home. In other words, the Government's case rests upon the proposition that Petitioner was in the bath room at the same time with the principal. This, standing alone, even though it raises a suspicion, is insufficient to sustain the conviction of the Petitioner. It is not shown by any evidence whatever, aside from suspicion, surmises, conjectures and suppositions, that Petitioner did one thing to prevent the apprehension, trial and punishment of the principal, Thomas. Moreover, it was not shown by any proof that Petitioner knew that the principal, Thomas, had committed any offense against the United States, or any other kind of offense, and it was not shown by any proof that Petitioner knew that the persons endeavoring to gain entrance into the bath room were officers of any kind, but on the contrary, it is undisputed, and it is admitted by these plain-clothed City Officers themselves that they at no time made their identities known to this Petitioner or any one else. (Tr. 32, 33, 35, 36, 59). But, as has been hereinbefore pointed out, the officers did their utmost to conceal their real identities. (Tr. 35, 67).

As was stated by the Court in the case of *Cox vs. U. S.*, 96 Fed. (2nd), at page 43:

> "• • • Evidence which is consistent with two conflicting hypothesis tends to prove neither. Gunning vs. Cooley, 281 U. S., 90; Stevens vs. The White City,

285 U. S. 195; Svenson vs. Mutual Life I[illegible] Ins. Co., 87 Fed. (2nd) 441; New York Life Ins. Co. [illegible]Co. vs. King, 93 Fed. (2nd) 347; and proof of circumstan[illegible]tances which, while consistent with guilt, are not consi[illegible]nsistent with innocence, will not support a conviction."[illegible]."

For the sake of argument, let us indulge in[illegible] in the false assumption that this Petitioner knew that the[illegible]he principal, Thomas, had the marihuana in his, Thomas's, [illegible], hand when the principal came into the bath room. This,[illegible]is, standing alone, still would not be sufficient to sustain [illegible]n Petitioner conviction because as was stated by the Court in[illegible] in the case of *Knight vs. U. S.*, 299 Fed. 568:

> "The presumption of innocence in his[illegible] his (appellant's) favor is not overcome, in the absenc[illegible]nce of other proof connecting him with the crime, by the[illegible]he fact that he was often seen with one who committe[illegible]ted the offense, or knew it was to be committed, [illegible], or was a spectator thereof. 16 C. J. 535-546, 674."

And, again, as was stated by the Fifth Circ[illegible]rcuit Court of Appeals in the case of *Cantrell vs. U. S.*, [illegible], 158 Fed. (2nd) 517:

> "The presence of Cantrell in the vicinity [illegible] of the still and along the pathway leading to the pu[illegible]ublic road, was not enough, standing alone, to support[illegible]t a verdict of guilty on the first two counts of the in[illegible]indictment. The rule in such cases * * * is that the [illegible] inferences that may be drawn from the evidence mus[illegible]st not only be consistent with guilt but inconsistent w[illegible]with every reasonable hypothesis of innocence. Strid[illegible]ckland vs. U. S., (5 Cir.) 155 Fed. (2nd) 167, 168; [illegible] Kassin vs. U. S. (5 Cir.), 87 Fed. (2nd) 183."

We, therefore, respectfully submit and earnestly urge that the evidence, taken as a whole, is absolutely insufficient to sustain Petitioner's conviction, and that his motion for judgment of acquittal should have been, in all things, granted by the trial Court.

II.

Scienter is an absolute requisite and is essential and necessary in prosecuting a person as an accessory after the fact in a Court of the United States.

AUTHORITIES:

Hargett vs. U. S., (5 Cir), 183 Fed. (2nd) 859;

Pettibone vs. U. S., 148 U. S. 197;

Fullbright vs. U. S., 91 Fed. (2nd) 210;

Hargrove vs. U. S., (5 Cir), 67 Fed. (2nd) 820.

STATEMENT AND ARGUMENT:

This very essential requisite, of scienter was not established, in whole or in part, by the evidence relied upon by the Government in the case at Bar. It is undisputed that the four officers were plain-clothed officers or detectives of the City of Dallas, Texas. It will be further undisputed that these four City Officers were not accompanied at the time and on the occasion in question, by any Federal Officer. Again, assuming for the sake of argu-

ment that this Petitioner was aware of the identities of the City Officers at the time they were forcing their way into the bath room, which, of course, he did not because the officers themselves admitted that they did not make known their identities, (Tr. 32, 33, 35, 36, 59), and one of the officers testified that he probably hollered "telegram" or "Western Union" when he went upon the front porch of the principal's home, (Tr. 35), but assuming that the Petitioner actually knew that they were plain-clothed city police officers, then how would this knowledge have legally placed the Petitioner upon notice that the principal would be ultimately prosecuted in a Court of the United States in connection with the marihuana, assuming further, of course, that the Petitioner knew that the principal was in possession of the marihuana? But under such assumed facts and circumstances, wouldn't it have been legally logical for the Petitioner to have come to the immediate conclusion that, since the officers were city officers and NOT FEDERAL OFFICERS, that any transgression on the part of the principal, Thomas, would be prosecuted ultimately either in the Corporation Court of the City of Dallas, or in some State Court of Dallas County, Texas? In this particular, carrying the point further, if we apply the well recognized presumption that the Petitioner was presumed to know the law, then he was legally cognizant that there were then in effect the following City Ordinances, which appear in the Code of the City of Dallas, Texas:

"Art. 55-7. Sale or possession of marijuana. It shall hereafter be unlawful for any person, firm or corporation to have in his or its possession for sale or to sell marijuana or any mixture or compound containing same.'

"Art. 55-8. Use of Marijuana. It shall hereafter be unlawful to smoke, eat or otherwise use marijuana or any mixture or compound containing the same."

"Art. 55-9. Possession of marijuana as evidence. The possession of marijuana shall be prima facie proof that the possessor is guilty of having same for sale and for the purpose of using same."

"Art. 55-10. Penalty for violation of three preceding articles. Any person violating any provision of the three preceding articles shall be punished by a fine of not more than two hundred Dollars."

And, too, the Appellant was legally presumed to know of the existing law of the State of Texas prohibiting the possession of illegal marihuana, which is set forth as Section 2 of Art. 725b of Vernon's Penal Code of the State of Texas, and which reads as follows:

"Sec. 2. It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug."

And under this State law, marihuana is defined as being a narcotic drug, and for a violation thereof, a penalty of not less than two years nor more than ten years is prescribed in the Act.

So, it can most readily be seen from the foregoing that this Petitioner, had he actually known that the four plain-clothed men were officers of the City of Dallas, Texas, and further, had he actually known that the principal was then in possession of marihuana, could very logically and legally have assumed that the marihuana transgression on the part of the principal would be prosecuted ultimately either in the Corporation Court of the City of Dallas, or in some State Court of Dallas County, Texas, AND NOT IN A COURT OF THE UNITED STATES WHICH WAS DONE SOME TWO MONTHS LATER.

In the case of *Fullbright vs. U. S.*, 91 F. (2nd) 210, the Appellant was tried and convicted on two counts charging conspiracy with another to harbor and conceal two persons for whose arrest Federal process had been issued. In reversing that conviction, the Appellate Court stated:

> "There is no evidence in the record that either Mrs. Sparger or the Appellant had specific knowledge that either Langan or Sparger had violated any Federal Law, or that Federal Warrants had been issued for their arrest. Knowledge that the fugitives were evading officers in general or that a State Government had issued warrants for their arrest is immaterial. Such acts are beyond the purview of the Statute. The Federal Statute is not directed against violations of the Criminal laws of the States. * * *"

Also, in the case of *Pettibone vs. U. S.*, 148 U. S., 197, this Court, in speaking of scienter, stated:

"It is insisted, however, that the evil intent is to be found, not in the intent to violate the United States Statute, but in the intent to commit an unlawful act; in the doing of which, justice was in fact obstructed, and that, therefore, the intent to proceed in the obstruction of justice must be supplied by a fiction of law. But the specific intent to violate the Statute must exist to justify a conviction, and this being so, the doctrine that there may be a transfer of intent in regard to crime flowing from general malevolence has no applicability. * * * *"

"The defendants could neither be indicted nor convicted of a crime against the State in the Circuit Court, but their offense against the United States consisted entirely in the violation of the Statute of the United States by corruptly or by threats or force, impeding or obstructing the due administration of justice. If they were not guilty of that, they could not be convicted. And neither the indictment nor the case can be helped out by reference to the alleged crime against the State, and the defendants be punished for the latter under the guise of a proceeding to punish them for an offense which they did not commit."

Again, in a more recent decision by United States Court of Appeals for the Fifth Circuit, in the case of *Hargett vs. U. S.*, 183 Fed. (2nd) 859, that Court passed on the question of scienter. In that case, the Appellant was tried and convicted of forcibly assaulting, resisting, opposing, impeding, intimidating and interfering with an Investigator of the Alcohol Tax Unit, of the Treasury Department of

the United States. The Court in that case stated, in part, as follows:

> "The sequence of events that occurred * * * demonstrates that the oft-repeated statement that one is presumed to have intended the natural and normal consequences of his act cannot be universal in its application * * *."
>
> "We deem it unnecessary to pass upon all the specifications of error inasmuch as the instruction of the trial court to the jury, that if the defendants did act for the purpose of obstructing or impeding any person, whoever he might be, who later turned out to be a Federal Officer, involved in the discharge of his duty, then the defendants had committed a Federal offense under the law, will require a reversal of the judgment. On the merits, the case depends upon the ansto prove that the defendants knew, or should have been deemed to know, from the facts and circumstances, that they were assaulting or resisting a Federal Office rin the discharge of his duty. If scietner was a requisite to due process of law, then without question, the motion of the defendants for an acquittal should have been sustained and the charge of the Court above mentioned was erroneous. The United States Attorney, meeting the issue squarely, does not attempt to show that the defendants knew that the men in the circling automobile were officers, Federal or State. He insists that such knoweldge was not necessary in order to convict under the Statute, and he relies to support his position chiefly on the opinion of the Circuit Court of Appeals in the now celebrated case of McNab v. United States, 123 F.)2nd) 848 * * *.'

'But McNabb v. U. S., supra (123 F. 2d 855), was a murder case, and not one for resisting a Federal Officer. * * * It is elementary that it is not essential to prove in every murder case that the defendant knew the person whom he slew. Moreover, the great weight of authority is against the Government's contentions." "Pettibone v. U. S., 148 U. S., 197, 13 St. Ct. 542, 543, 37 L. Ed. 419, is the leading case and clearly holds that scienter is necessary in a prosecution for obstruction of officers of the United States. * * *"

"The Court of Appeals of the Fifth Circuit has construed scienter as a material ingredient of a statutory offense relating to obstruction of justice in Odom v. U. S., 116 F. 2d 996. See also: Palmquist vs. U. S., 149 F. 2d 352; Gay v. U. S., 12 F. 2d 433; Moore v. U. S., 57 F. 2d 840; and Cook v. U. S., 117 F. 2d 374. * * *"

'In 39 Amer. Jur., Obstructing Justice, Sec. 13, this language is used: '* * * If an officer does not disclose his authority and the accused does not know that he is an officer and is attempting to arrest him for an offense, he has a right to resist the arrest with whatever force is necessary' ".

We say that the Legislative intendment contained in the provisions of Section 3 of Title 18, U.S.C., upon which the information against this Petitioner is predicated, is aimed solely and exclusively at the protection of proceedings in the Courts of the United States, and that before this Petitioner can be convicted as an Accessory After the Fact, it must be shown by legal and competent evidence, beyond a reasonable doubt, that he had knowledge that the prin-

and that such evidence should further show, beyond a reacipal had committed an offense against the United States, sonable doubt, that this Petitioner knew, or was deemed to know, that such a violation on the part of the principal would be prosecuted in a Court of the United States, and having such knowledge, that such evidence further should show, beyond a reasonable doubt, that the Petitioner did or committed some affirmative overt act to "receive, relieve, comfort or assist the principal in order to hinde ror prevent such principal's apprehension, trial and punishment" in a Court of the United States, AND NOT JUST COURTS IN GENERAL.

We, therefore, respectfully urge upon this Court that the evidence in this case absolutely and wholly fails to establish these essential requisites of scienter, and that there is no evidence in the Record to sustain the conviction of this Petitioner as being an Accessory after the Fact if the well established principles of due process of law are applied in this case.

CONCLUSION:

For all of the grounds and reasons hereinbefore stated, Petitioner respectfully submits that his Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit to review the judgment of said Court in affirming the judgment against this Petitioner entered in the United States District Court for the Northern Dis-

trict of Texas, Dallas Division, is well supported in law and in fact and should be in all things allowed and granted and the case reviewed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 229

LOUIS JOE LEFORCE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the District Court (R. 100-103) is not reported. The Court of Appeals affirmed without opinion (R. 110).

JURISDICTION

The judgment of the Court of Appeals was entered on June 2, 1952 (R. 111). A petition for rehearing was denied on July 2, 1952 (R. 120). On July 26, 1952, the petition for a writ of certiorari was filed. The jurisdiction of this Court is invoked

under 28 U.S.C. 1254(1). See also Rules 37 (B) (2) and 45 (a), F.R. Crim. P.

QUESTION PRESENTED

Whether there was sufficient evidence to support the conviction of petitioner as an accessory after the fact.

STATUTE INVOLVED

18 U.S.C. 3 provides:

> Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

STATEMENT

On May 7, 1951, an indictment was returned in the District Court for the Northern District of Texas charging one George Everett Thomas, Jr., with unlawfully obtaining marihuana in violation of the Marihuana Tax Act of 1937, 26 U.S.C. 2593(a) (R. 1-2). On May 9, 1951, an information was filed in the same court repeating the charge against Thomas and charging petitioner in a second count with "unlawfully, knowingly and wilfully" assisting Thomas so as to hinder and prevent his arrest, trial and punishment, in violation of 18 U.S.C. 3 (R. 4-5). Thomas entered a plea of guilty to the charge of unlawfully obtaining marihuana, and on May 10, 1951, judgment was entered and a sentence of two years' imprisonment imposed. (R. 2-3.) Petitioner pleaded not

guilty, but following trial by the court sitting without a jury, was found guilty and sentenced to imprisonment for a period of two years (R. 103-104). The Court of Appeals for the Fifth Circuit, on June 2, 1952, affirmed without opinion (R. 110).

At the trial the following evidence was adduced:

At about 8:30 on the evening of March 16, 1951, petitioner and a female companion went to the home of George Everett Thomas, Jr., and his wife for the purpose of buying some dresses (R. 64, 76-77). At about 9 o'clock the two couples left to attend a motion picture, returning some time between 11:30 and midnight (R. 65, 78). All four again went into the Thomas home. Their return was observed by four Dallas city detectives who had earlier that day secured a state search warrant authorizing search of the Thomas residence for a quantity of narcotics believed by them to be on the premises. (R. 16, 57.) Shortly after petitioner's party entered the Thomas home, three of the detectives sought admittance through the front door. Mrs. Thomas, recognizing one of the officers whom she knew from a previous occasion when he had arrested her and her husband, screamed a warning and attempted to obstruct the detectives' entrance. The three detectives ripped out the screen door and forced their way into the house. (R. 11, 55, 67.) A fourth detective had meanwhile effected an entrance by the back door (R. 40).

On entering the house the detectives did not see either petitioner or Thomas, but they heard coming from behind the bathroom door "what sounded

like the handle of a commode, and water running" (R. 11, 56). The detectives attempted to force open the bathroom door, and quickly succeeded in breaking the lock. However, they still were unable to enter the bathroom because the door could not be opened more than a few inches. At least once, the door opened sufficiently so that Thomas could be seen bending over the commode in a position which indicated that he could not possibly have been holding the door. (R. 41-43.) Finally, after one of the detectives took a ten-foot run, the door was forced open and the three detectives fell into the bathroom. Inside they saw Thomas still leaning over the commode with one hand in the bowl and one hand reaching toward the wash basin. Petitioner was found pinned behind the door. (R. 13, 41, 56.) By using a tea strainer the detectives were able to recover 83 grains of marihuana from the commode and wash basin. (R. 14, 51, 56.)

ARGUMENT

In substance, it is petitioner's contention that the Government failed adequately to prove that petitioner was, in fact, opposing the efforts of the detectives to enter the Thomas bathroom, and if he was, that he was doing so with the requisite scienter, that is, with knowledge that in so doing he was helping Thomas to evade prosecution for an offense against the United States. It is axiomatic, however, as this Court has observed many times, that an appellate court will not interfere with the findings of fact of the trial court

unless it clearly appears that they "are not supported by any evidence." *United States* v. *Johnson*, 327 U.S. 106, 112; see *Graver Mfg. Co* v. *Linde Co.*, 336 U.S. 271, 275.

Manifestly, the trial court's finding that petitioner attempted to keep the police officers out of the bathroom is amply supported by the testimony of the officers themselves. (R. 12-14, 40-43, 55-57.) Scienter, which indisputably is an element of the offense, was also established by sufficient evidence. There was testimony that Mrs. Thomas uttered some warning when the detectives sought to enter the house (R. 11, 40, 55, 67), and it is probable that this was overheard by petitioner. In any event, Thomas' hurried and agitated entry into the bathroom [1] and his subsequent frenzied efforts to dispose of the marihuana must have indicated to petitioner that Thomas feared prosecution for illegal acquisition of narcotics. Since petitioner had himself been convicted in a federal court for violation of the Marihuana Tax Act at an earlier time (R. 89), it is clear he knew that unauthorized purchase and possession of marihuana was a federal as well as a state offense. Petitioner's denial of knowledge in the face of his

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[1] On cross-examination, petitioner testified as follows (R. 90-91):

"Q. And did he say anything when he came into the bathroom?

"A. He pushed me and said, 'Get back out of the way,' or words to that effect, I couldn't quote him word for word.

"Q. Was he in a big rush?

"A. He sure was."

proximity to Thomas [2] and his admitted familiarity with marihuana and the federal marihuana tax statute, is hardly credible. At any rate, the trial judge who was in the best position to weigh all the evidence did not believe it.

The Court of Appeals having concurred in the findings of the trial court, there is no occasion for further review. *Graver Mfg. Co.* v. *Linde Co., supra; United States* v. *Johnson,* 319 U.S. 503, 518; *Delaney* v. *United States,* 263 U.S. 586, 589-590.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1952.

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[2] According to petitioner's measurements the bathroom is only 6 feet, 10 inches long, and 4 feet, 11 inches wide, much of that area of course being occupied by tub, wash basin, and commode (R. 83).

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